

billing calling parties for the airtime charges, a notification system informing calling parties that they will be subject to these charges will serve as an important consumer protection measure.

Pilgrim also believes that the notification system should be implemented on a uniform, nationwide basis. Requiring that notification be carried out in a uniform manner ensures that all consumers will receive the benefit of requirements the Commission establishes regarding the types of information that must be included in notifications provided to parties who are seeking to place calls to CPP subscribers. In addition to this consumer benefit, the uniform, nationwide application of notification requirements established by the Commission will be easier for carriers to implement than a notification system that could vary from State to State or region to region. This ease of implementation will, in turn, benefit consumers by reducing carrier costs caused by designing and implementing the notification system.

## **B. Mechanics and Content of Notification**

The Commission proposes to develop a uniform, verbal notification announcement that would include the following elements: (1) an indication that the calling party is making a call to a CPP subscriber and will be billed for airtime charges; (2) an identification of the CMRS carrier; (3) a specification of the per minute rate and any other charges that the calling party will be charged; and (4) notice that the calling party may terminate the call before incurring any charges.<sup>94</sup>

Pilgrim supports the Commission's proposal because we believe it reflects an effective and reasonable means by which to serve consumer protection objectives by providing pertinent information to calling parties and giving them the opportunity to avoid any CPP-related charges

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<sup>94</sup> *Id.* at para. 42.

if they so desire. The Commission's proposal also serves its goal of facilitating the introduction and implementation of CPP calling options because the notification system should not be cumbersome or expensive for CPP providers to implement. In addition to voicing our general support for the Commission's proposal, Pilgrim also wishes to address several specific issues in the following sections.

### **1. Additional Charges; Other Elements of Message**

Pilgrim supports the Commission's proposal to include in the notification information regarding "all of the additional charges billed by the CMRS provider to the calling party for the call [,including] . . . for instance, [charges] for roaming or for long-distance service."<sup>95</sup> In establishing such a requirement that the notification include the per minute rate and additional charges, the Commission should, however, also provide some degree of flexibility to CMRS carriers regarding the manner in which they can comply with this requirement. Including accurate information could require a notification mechanism capable of tailoring rate information virtually on a per call basis, in that the nature and level of additional charges will tend to vary based upon the circumstances of each call. Rather than settle for a general announcement that some additional charges may apply, the Commission would better serve consumers by requiring that the CPP provider tailor the announcement to provide rate information (especially as it relates to additional charges) with as much precision as possible. But the Commission should grant flexibility to CPP providers with regard to working out the technical arrangements that would be necessary to effect such a specific notice regarding rate information.

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<sup>95</sup> *Id.* at para. 43.

CTIA, in opposing the provision of cost information because the information would be incomplete or misleading,<sup>96</sup> raises several issues that the Commission should consider in deciding whether to require information regarding air time rates and additional charges. CTIA points out that many factors will affect the cost of a CPP call, including IXC-imposed toll charges, message unit charges imposed by the caller's local carrier, and variations in the CMRS carrier's charges depending upon the length of the call, the time of day of the call, and the subscriber's choice of the multiple service plans that may be offered by the CMRS carrier.<sup>97</sup> CTIA also argues that lengthening the intercept message "to explain all possible charges, including foreseeable and unforeseeable charges, would, in effect, make the message impractical and useless. Simply stated, an intercept message that is too long and too complicated will lead to consumers hanging-up before the message has been completed."<sup>98</sup>

Thus, CTIA asserts that any notification that attempts to include rate information would be inaccurate, incomplete, and too long. Pilgrim agrees with CTIA that, if the Commission opts to impose a requirement that rate information be included in a verbal announcement, the information should be as accurate and complete as possible. With respect to the CPP provider's own charges, the problem may not be as severe as CTIA suggests. Factors such as time of day and the applicable rate plan should lend themselves to a per minute rate calculation, *i.e.*, the per minute rate at the time the call is placed will be constructed with reference to the time of day of the call and CPP subscriber's rate plan. Thus, it should be possible for the notification to provide

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<sup>96</sup> CTIA Reply Comments to CTIA Petition, filed June 8, 1998, at 6. (CTIA filed a Petition for Expedited Consideration in this docket in February 1998. *See CPP Rulemaking Notice* at para. 5 & n.7.)

<sup>97</sup> CTIA Comments to NOI at 9.

<sup>98</sup> *Id.* at 9 n.19.

the calling party with a brief announcement of the per minute rate calculation based on all these factors. If the CMRS carrier's rate also varies depending upon the duration of the call, it may be possible to advise the calling party of this by stating the basic per minute rate for the initial period of the call and also indicating that this rate will increase if the call length exceeds the initial period.

Regarding additional charges,<sup>99</sup> it may also be possible to advise the calling party that roaming charges will apply, and to quote the per minute rate for these charges. Similarly, it may be possible to advise the calling party that IXC long distance charges will apply and to indicate the applicable per minute rate. This information is "knowable," in that it must be identified and calculated for purposes of billing the call. The issue is whether it is technically feasible to provide this information to the calling party in real time at the outset of the call.

As we have noted, Pilgrim believes that the Commission's proposal to provide comprehensive information concerning rates will serve important consumer protection goals, and the Commission's approach should be technically feasible if CPP providers are given sufficient flexibility to achieve compliance. Providing calling parties with information regarding basic and additional charges — including, for example, roaming, long distance, text dispatch, paging, text messaging, and voice mail charges — will enable calling parties to make an informed choice about whether to place calls to CPP subscribers.

A possible way to accomplish this would be for the Commission to permit a range of different types of announcements, any of which would be deemed in compliance with the

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<sup>99</sup> Pilgrim notes that it may not be necessary to advise the caller that message unit charges may be imposed by the caller's LEC, since the caller (as a subscriber to the LEC's service) should already be aware of those charges.

notification requirement, but which also would be intended to account for the fact that the facilities of the various CPP providers may have different levels of technical capabilities. Some examples may help to illustrate the approach Pilgrim is suggesting.

Option One. Announce an overall per minute rate, that would be calculated to include any additional charges that may apply. The announcement could state, for example: “You will be billed 50 cents per minute for the call.” The rate would include any roaming, long distance, or other charges billed on a per minute basis. There would be no need to specify in the announcement each of the separate components of the charge, because the caller would be apprised of the overall, “bottom line” per minute rate. This approach would require facility capabilities to calculate the overall rate on a real time basis.

Option Two. Announce the per minute airtime rate, and the maximum additional rate that could apply to the call if additional charges were to accrue, depending on the circumstances of the call. The announcement could state, for example: “You will be charged a basic rate of 35 cents per minute, and you may be charged an additional 15 cents per minute if long distance, roaming, or other additional charges apply to your call.” This approach would require facilities capable of calculating the overall rate that could apply (50 cents, in this example), but would not require the technical capability to determine in real time whether additional charges will actually apply to the call.

Option Three. Announce the per minute airtime rate, and also notify the caller regarding each per minute or per message rate that could apply to the call. The announcement could state, for example: “You will be charged a basic rate of 35 cents per minute. The following additional charges may also apply: a 10-cent per minute roaming charge and a 5-cent per minute long distance charge. If you send a page, you will be charged 5 cents per message.” This approach

would require facilities capable of identifying the level of each additional charge, but would not require the technical capability to calculate the overall rate that could apply or the ability to determine in real time whether any additional charges will actually apply.

The Commission's rules could also permit CPP providers to develop other options for providing notification, so long as the options comply with the central requirement that calling parties be given comprehensive and accurate information about the charges they will incur. Although the options we have discussed here are intended to illustrate how this central requirement could be met through the use of facilities with differing technical capabilities, we also believe that the first option represents the best approach, since it would provide the caller with the pertinent bottom line rate after a "behind the scenes" real time calculation of the rates that would actually apply to the call.

Pilgrim agrees with CTIA that lengthening the duration of the notification message could reach a point of diminishing returns, in that the calling party may terminate the call rather than wait through to the end of the intercept message. There are presumably two aspects of this issue: (1) What would be the duration of the call set-up time necessary for the carrier's systems to identify the applicable rates, calculate the overall per minute rate, and package this information into the verbal message?<sup>100</sup> (2) How long would the verbal message be?

The Commission may consider it appropriate to seek information from carriers regarding whether and the extent to which call set-up times would be affected by different scenarios for the inclusion of rate specific information in CPP notifications. Although CTIA does not address this

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<sup>100</sup> As noted in our discussion above, Pilgrim favors giving CPP providers some flexibility to select options for notification messages based upon the capabilities of the providers' facilities and equipment. Some options may not include calculation of an overall per minute rate.

issue specifically, CTIA does point out that the general wireline industry standard for delay between call initiation and call completion is 3 seconds,<sup>101</sup> and that the Commission, in implementing number portability, found that a 1.3 second delay for routing ported numbers would be unacceptable.<sup>102</sup>

With respect to the verbal message itself, it should be possible to provide a notification message lasting 30 to 40 seconds that imparts specific information about varying CMRS carrier rates, roaming charges, and long distance charges. Such a duration would be comparable to the length of recorded menu-selection call answering systems currently in use by many businesses and other organizations. Moreover, the length of the CPP notification message would be reduced in cases in which the CPP provider does not charge varying rates depending upon call duration, and in cases in which roaming or long distance charges do not apply. As Pilgrim discusses below, any problems regarding the length of the verbal message might also be ameliorated by a mechanism permitting a “bypass” of the message.<sup>103</sup>

With respect to other elements of the message, Pilgrim suggests that CPP providers be given flexibility to devise mechanisms the calling party can use to terminate or to complete the call. In addition to the “bypass” mechanism we discuss in the next section, the CPP provider should be able to employ a “positive” or “passive” acceptance of call completion. A “positive” acceptance would involve giving the calling party an instruction to push a button or to give a verbal indication (if the CPP carrier’s equipment has voice recognition capabilities) in order for the call to be completed. A “passive” acceptance would involve the CPP notification including a

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<sup>101</sup> CTIA Reply Comments to CTIA Petition at 6 & n.16.

<sup>102</sup> *Id.* at 6-7 & n.17.

<sup>103</sup> See page 47, *infra*.

verbal message stating: “If you hang up now you will not be charged for this call.” If the calling party chooses not to hang up, then the call would be completed, but the time measurement for billing purposes would be delayed for several seconds after the verbal message (to give the calling party time to disconnect without incurring any charges).

## **2. Phase-Out of Verbal Notification Requirement**

Pilgrim opposes (with one exception that we will discuss) any movement “to a simpler, more streamlined notification system that would *not* include rate information . . . .”<sup>104</sup> As a general matter, Pilgrim believes that any relaxation of requirements to provide rate information would disserve consumers and ultimately threaten consumer acceptance and utilization of the CPP option. Calling parties will need to be “cooperating partners” in the Commission’s efforts to realize the potential that CPP holds to enhance local exchange competition, wireless competition, and spectrum efficiency. To the extent that calling parties refuse to “cooperate” by restricting their calls to CPP subscribers, the Commission will have failed to accomplish these objectives. Securing this customer acceptance, in Pilgrim’s view, will depend in large part on taking an “up front” approach with calling parties by giving them the best and most complete information possible regarding charges they will incur by calling a CPP subscriber. Any suggestion that the Commission should permit CPP providers to backtrack from a verbal notification that includes rate information should be rejected because it would fail to protect consumers and would risk consumer rejection of the CPP service.

Arguments that the verbal notification can be phased out because calling parties over time will become familiar with the fact they will incur charges when they call CPP subscribers are not

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<sup>104</sup> *CPP Rulemaking Notice* at para. 44 (emphasis added).



persuasive because they overlook the fact that there are always likely to be first-time callers to CPP subscribers and these callers should receive the benefit of a verbal notification. The same benefit also should apply to infrequent callers to CPP customers. Moreover, as wireless carrier rates continue to decrease as a result of competition,<sup>105</sup> call completions to CPP subscribers may be enhanced by specifically advising calling parties of these low per minute rates, as opposed to using a tone as the notification mechanism and thus leaving the calling party to speculate about the rate levels.

With regard to a possible exception to this general approach, Pilgrim suggests that the Commission permit the use of some type of “bypass” mechanism whereby the calling party could skip the verbal notification and proceed to an immediate connection with the CPP subscriber. Calling parties communicating with CPP subscribers on more than an occasional basis may find such a feature convenient.

### **3. Alternatives to Verbal Notification**

The Commission has sought comment regarding whether other options for providing calling party notification should be used in place of, or in addition to, the use of a verbal notification as proposed by the Commission. The Commission lists 1+ dialing and the use of NXX or Service Access Codes (SACs) as examples.<sup>106</sup> Pilgrim opposes the use of any of these alternatives as replacements for a verbal notification. We believe this would be a “second best”

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<sup>105</sup> Average monthly prices for wireless service fell 1.6 percent in August 1999, compared to the previous month. *Telephony*, COMM. DAILY, Sept. 9, 1999, at 7. From December 1987 to December 1998, the average monthly bill for cellular, enhanced specialized mobile radio, and personal communications services fell from \$96.83 to \$39.43. The average monthly bill fell 7.8 percent in 1998. CTIA, Semi-Annual Wireless Industry Survey (available at <http://wow-com.com/wirelessurvey/>).

solution that would not afford the level of consumer protection that can be achieved through use of a verbal notification. We agree with CTIA that use of a unique CPP area code or other dialing prefix would not necessarily alert calling parties that they are calling a CPP subscriber.<sup>107</sup>

Although some parties have suggested that the use of a unique service code would enable telephone switches and private branch exchanges easily to identify CPP calls (thus enabling call screening and blocking functions to be activated),<sup>108</sup> Pilgrim believes that a better solution might be the creation of a per line blocking option, whereby each phone line could be programmed so that it is either “open” or “closed” for purposes of the placement of calls to CPP subscribers. This would necessitate creation of a database, similar to the Line Identification Data Base (LIDB), to be used for determining whether a dialed number is a CPP number.

## **V. LEVEL OF RATES CHARGED TO CALLING PARTIES**

The Commission expresses concern that rates charged by CMRS carriers to parties calling CPP subscribers may not be subject to sufficient market pressures to ensure that they will be set at reasonable levels.<sup>109</sup> Pilgrim opposes any suggestion that the Commission should act to monitor or regulate rates charged by CMRS carriers in connection with their provision of a CPP service option, for three reasons. First, a notification requirement crafted in the manner proposed by the Commission should serve as an effective check against the level of rates charged to calling

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<sup>106</sup> *CPP Rulemaking Notice* at para. 45.

<sup>107</sup> CTIA Reply Comments to CTIA Petition at 6-7.

<sup>108</sup> *See CPP Rulemaking Notice* at para. 46.

<sup>109</sup> *Id.* at para. 53 (“Direct competitive pressure on the rate does not exist in the case of a call to a CPP subscriber . . . because the caller does not select the carrier and does not have the ability to switch to a different carrier to obtain a better rate for completing the call.”).

parties. To the extent calling parties are armed with the knowledge of the cost of the call, they can decide to disconnect the call if they prefer not to pay the rate. It also seems unlikely that there would be frequent circumstances compelling calling parties to complete calls to CPP subscribers even though the calling parties find the quoted rate levels objectionable.

Second, there should in fact be adequate market pressures acting to place limits on CPP rates to calling parties. Specifically, it seems reasonable to assume that the CPP subscriber will not be indifferent to the rate charged to calling parties. For example, if the CPP subscriber is using the service option in a business context, the subscriber may have an interest in minimizing rates paid by calling parties who may be clients or potential sources of business. Thus, potential CPP subscribers would have an option to “shop around” among CMRS providers for purposes of contracting for the best rate.

Finally, CPP providers should have an incentive to set rates to calling parties at reasonable levels, because, as the Commission has noted, CPP has the potential to stimulate wireless network usage, with attendant benefits for both CPP subscribers and calling parties.<sup>110</sup> This potential would not be realized, and the viability of CPP in the marketplace might be placed at stake, if CPP providers were to set rates to calling parties at unreasonably high levels.

## **VI. CONCLUSION**

The Commission has an opportunity to protect and promote the pro-competitive purposes of the Act by establishing a foundation that will provide CPP with a fair test in the marketplace. If CPP is successful, consumers will benefit from enhanced competition and increased spectrum efficiency. A fair marketplace test can only be provided if CPP providers can recover charges

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<sup>110</sup> *Id.* at para. 3.

from calling parties. This, in turn, can be accomplished successfully only if the Commission acts to require the LECs to provide billing and collection service to CPP providers. The Commission therefore should invoke its ancillary jurisdiction as the best means of achieving the objectives the Commission has sought to pursue in this rulemaking proceeding.

A handwritten signature in black ink, appearing to read "John Cimko", written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I, Joelle Zajk, a Professional Assistant with the law firm of Hunton & Williams, hereby certify that on September 17, 1999, a true and correct copy of the foregoing COMMENTS OF PILGRIM TELEPHONE, INC., were served by hand delivery upon the following:

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